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17 and James M. Rhodes Dynasty Trust II;  
18 Gypsum Resources, LLC; and Truckee Springs Holdings, Inc.

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC,  
a/k/a "Rhodes Homes," et al.,

Case # 2:12-cv-01272-MMD-VCF BASE  
Case # 2:13-cv-00704-MMD-VCF  
Adversary Case # 12-01099-LBR  
Bankruptcy Case # 09-14814-LBR (Ch. 11)

Reorganized Debtors.

THE LITIGATION TRUST OF THE  
RHODES COMPANIES, LLC, ET AL.,

Plaintiff,

v.

JAMES M. RHODES; SEDORA  
HOLDINGS, LLC; SAGEBRUSH  
ENTERPRISES, INC.; GYPSUM  
RESOURCES, LLC; TRUCKEE SPRINGS  
HOLDINGS, INC.; JOHN C. RHODES,  
TRUSTEE OF THE JAMES M. RHODES  
DYNASTY TRUST I; JOHN C. RHODES,  
TRUSTEE OF THE JAMES M. RHODES  
DYNASTY TRUST II; and RHODES  
RANCH, LLC,

Rhodes Defendants and Plaintiff's Joint  
Stipulation Under LR 26-4 to Extend  
Unexpired Discovery Cut-off Deadline by  
Eight Days

[Second Request]

Defendants.

I.

## Introduction

Defendants James M. Rhodes, Sagebrush Enterprises, Inc., Rhodes Ranch, LLC, John C. Rhodes, Trustee of the James M. Rhodes Dynasty Trust I, John C. Rhodes, Trustee of the James M. Rhodes Dynasty Trust II, Gypsum Resources, LLC, and Truckee Springs Holdings, Inc. (“Rhodes Defendants”) and Plaintiff The Litigation Trust of the Rhodes Companies, LLC, Et Al. (“Plaintiff”), hereby file this joint stipulation to extend the unexpired discovery cut-off deadline by eight days for the limited purpose of completing expert depositions. The discovery cut-off deadline is scheduled to expire on August 5, 2015, and this joint stipulation to extend that deadline has been filed **more** than 21 days **before** its expiration. The Parties jointly submit that good cause exists to extend the discovery cut-off deadline because they all have been diligent in conducting and pursuing discovery in this matter.

II.

## **Standard to Extend Discovery Deadlines**

15 A stipulation to extend deadlines in the Court’s scheduling order must be supported by  
16 a showing of “good cause” for the extension. LR 26-4. “The good cause inquiry focuses  
17 primarily on the movant’s diligence.” *Derosa v. Blood Systems, Inc.*, 2013 WL 3975764 at \*1,  
18 No. 2:13-cv-0137-JCM-NJK (D. Nev. Aug. 1, 2013) (citing *Coleman v. Quaker Oats Co.*,  
19 232 F.3d 1271, 1294–95 (9th Cir. 1992)). Good cause to extend discovery deadlines exists  
20 where ““it cannot reasonably be met despite the diligence of the party seeking the extension.””  
21 *Derosa*, 2013 WL 3975764 at \*1 (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d  
22 604, 609 (9th Cir. 1992)). “[T]he inquiry should end” if the movant fails to show diligence.  
23 *Id.* (quoting *Coleman*, 232 F.3d at 1295 (quoting *Johnson*, 975 F.2d at 609)).

III.

## **Argument Supporting Stipulation**

**A. Good cause exists to extend the discovery cut-off deadline by eight days.**

As detailed below in the Parties' statements required under LR 26-4, the Parties have been diligent in their efforts to conduct and engage in discovery in this case. The Parties have concluded fact discovery—and do not seek to reopen that expired deadline. The only discovery that remains to be completed is deposition of the two experts previously disclosed by the Parties. The Parties desire to extend the discovery cut-off deadline, which has not yet expired, to accommodate the schedules of the Rhodes Defendants' expert and lead attorneys. As the Parties all have been diligent in their discovery efforts to date, good cause exists to allow a brief eight-day extension of the unexpired discovery cut-off deadline in this case.

**B. Statements required under LR 26-4.**

#### **1. Discovery that has been completed.**

Fact discovery closed in this case on March 2, 2015; the parties do not seek to reopen that expired deadline. The discovery that has been completed includes:

1. Deposition of the following fact witnesses:
  - a. FRCP 30(b)(6) witness for Defendant Sagebrush Enterprises, Inc.
  - b. FRCP 30(b)(6) witness for Defendant Gypsum Resources, LLC;
  - c. James M. Rhodes;
  - d. John C. Rhodes, Trustee for the James M. Rhodes Dynasty Trust I and  
Dynasty Trust II;
  - e. Clifford Beadle;
  - f. James Bevan;
  - g. Robert Evans;

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- h. Gary Fuchs;
- i. Ronald P. Gillette;
- j. Paul Huygens;
- k. Mark Jerue; and
- l. David Lyon.

2. Rhodes Defendants noticed the deposition of the FRCP 30(b)(6) witness for creditor G.C. Wallace, Inc., but no appearance was made at the time duly noticed for the deposition.
3. The Parties have exchanged several sets of written discovery in the form of requests for production of documents, interrogatories, and requests for admission.
4. The Parties have and continue to update and amend their disclosures pursuant to FRCP 26.
5. The Parties have subpoenaed documents from numerous third-party witness including, but not limited to the following:
  - a. Several Credit Suisse entities;
  - b. Moodys Investors;
  - c. Standards & Poor;
  - d. Province Advisors;
  - e. Paul Huygens;
  - f. Alvarez & Marsal;
  - g. Skadden, Arps, Slate, Meagher & Flom;
  - h. Gibson, Dunn & Crutcher;
  - i. Cushman & Wakefield;
  - j. Deborah Rhodes;

- 1                   k. Glynda Rhodes;
- 2                   l. Deloitte, LLP;
- 3                   m. Deloitte & Touche;
- 4                   n. Sorin Capital Management;
- 5                   o. General Electric Capital Corp.
- 6                   p. Highland Capital Management;
- 7                   q. Integrity Masonry, Inc.;
- 8                   r. G.C. Wallace, Inc.;
- 9                   s. Stanley Consultants, Inc.;
- 10                  t. American Soils Engineering, Inc.;
- 11                  u. Mark Jerue;
- 12                  v. T.I. Residential, Inc.; and
- 13                  w. Cypress Tree Investment Management, LLC.

14                 6. The Parties exchanged initial expert reports on May 6, 2015.

15                 7. The Rhodes Defendants served their rebuttal expert report on July 6, 2015.

16                 **2. *Specific description of discovery that remains to be completed.***

17                 The only discovery that remains to be completed is the deposition of the two experts  
18 previously disclosed by the Parties. The Parties anticipate that the deposition of Plaintiff's  
19 expert, Mark L. Mitchell, CFA, ASA of Peterson Sullivan, LLP, will go forward on either  
20 July 28 or 29, 2015. But, due to scheduling conflicts, the deposition of the Rhodes  
21 Defendants' expert, George C. Swarts, CPA of Swarts & Swarts, cannot be completed by the  
22 August 5, 2015 deadline. The Parties anticipate that the deposition of the Rhodes Defendants'  
23 expert will go forward on August 13, 2015.

1           ***3. Reasons why remaining discovery cannot be completed within the time limits  
set by the discovery plan.***

2           The Parties desire an eight-day extension of the discovery cut-off deadline for the  
 3 limited purpose of conducting expert depositions. The Rhodes Defendants are represented by  
 4 separate counsel and each desire to have their lead counsel present for the deposition of the  
 5 expert that they jointly disclosed in this action (Mr. Swarts): Mr. William Coulthard from  
 6 Kemp, Jones & Coulthard, LLP and Mr. James Walton from Nitz, Walton & Heaton, Ltd.<sup>1</sup>  
 7 Mr. Coulthard, Mr. Walton, and Mr. Swarts do not have a mutually convenient date until  
 8 August 13, 2015. Mr. Swarts is scheduled to provide trial testimony in an unrelated matter  
 9 during the week of August 3–7, 2015. Mr. Walton has a pre-planned family commitment (his  
 10 daughter’s wedding) and will be unavailable August 6–8. And Mr. Coulthard has a pre-  
 11 planned family commitment (out-of-state family vacation) and will be unavailable July 23–26  
 12 and July 31–August 10, 2015.

13           ***4. Parties’ proposed discovery schedule for completing all remaining discovery.***

14           The operative scheduling order in this action (Doc 135) (“Scheduling Order”) was  
 15 entered on March 19, 2015, following a joint stipulation of the Parties to extend all then-  
 16 unexpired deadlines by 30 days. Doc 134. The Scheduling Order provides for the following  
 17 discovery deadlines:

18           A. Discovery Cut-Off Date: August 5, 2015.  
 19           B. Expert Disclosures: May 6, 2015.  
 20           C. Rebuttal Expert Disclosures: July 5, 2015.

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22           <sup>1</sup> Defendants Sagebrush Enterprises, Inc.; James M. Rhodes; and Rhodes Ranch, LLC are  
 23 represented by the law firm of Kemp, Jones & Coulthard, LLP. Defendants John C. Rhodes,  
 24 in his capacities as trustee for the James M. Rhodes Dynasty Trust I and the James M. Rhodes  
 Dynasty Trust II; Gypsum Resources, LLC; and Truckee Springs Holdings, Inc. are  
 represented by the law firm of Nitz, Walton & Heaton, Ltd.

- 1           D. Interim Status Report: June 5, 2015.
- 2           E. Dispositive Motions: September 6, 2015.<sup>2</sup>
- 3           F. Joint Pre-trial Order: October 7, 2015.

4           The Parties seek to extend the deadlines in the operative discovery schedule as  
5 follows:

- 6           A. Discovery Cut-Off Date: August 13, 2015.
- 7           B. Dispositive Motions: September 7, 2015.<sup>3</sup>

8           The following remaining, unexpired discovery deadline would be unchanged:

- 9           A. Joint Pre-trial Order: October 7, 2015.

10                                  **IV.**

11                                  **Conclusion**

12           Based on the foregoing, the Parties jointly and respectfully submit that good cause  
13 exists to extend the unexpired, discovery cut-off deadline in this case by eight days for the  
14 limited purpose of conducting expert depositions. Accordingly, the Parties request that

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20                                  <sup>2</sup> Thirty days would make this deadline fall on Saturday, September 5, 2015.

21                                  <sup>3</sup> This change is simply to allow the dispositive deadline to fall on a week day.

1 this United States Magistrate Judge extend the unexpired discovery deadlines in this case as  
2 follows:

3       A. Discovery Cut-Off Date: August 13, 2015.  
4       B. Dispositive Motions: September 7, 2015.

5 Dated this 15<sup>th</sup> day of July, 2015.

6       /s/ William L. Coulthard  
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11       /s/ Michael J. Yoder  
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14 Attorneys for The Litigation Trust of the  
Rhodes Companies, LLC Et Al.

16 IT IS SO ORDERED:  
17   
18 CAM FERENBACH  
19 UNITED STATES MAGISTRATE JUDGE

20 DATED: \_\_\_\_\_ August 5, 2015  
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